

Before the
Federal Communications Commission
Washington, D.C.

JUN 20 2008

FCC Mail Room

In the Matter of:

Petition for Waiver of Decisions)	
of the Schools and Libraries Division)	
of the Universal Service Administrative)	
Company for Mingus Mountain Academy)	Form 471 Numbers: 638848, 638852,
Prescott Valley, Arizona)	638852, and 638854
)	
Joint Board on Universal Service)	CC Docket No. 02-6

Petition for Waiver
Mingus Mountain Academy
Entity Number 156965
Form 471 Numbers: 638848, 638852, 638853, and 638854.
Funding Request Numbers: 1767434, 1767435, 1767436, 1767437, 1767438, 1767439, 1767440,
and 1767441.

In accordance with Sections 54.719 through 54.721 of the Commission's rules, now comes Mingus Mountain Academy before the Commission requesting waiver of the Form 471 filing deadline of February 7, 2008. We request this waiver because the new part-time Information Technology person was not aware of the E-rate program until the 470 Form filing date had past. It was only at a conference that he became aware of the E-rate program and deadlines.

On May 7, 2008, the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) issued correspondence to Mingus Mountain Academy indicating the Form 471 Numbers 638848, 638852, 638853, and 638854 were filed outside the Program Year 2008 funding window and would therefore not be considered for funding. Due to extenuating circumstances of new personnel, we ask for waiver of program rules and consider this application to be filed within the Year 2008 filing window.

Background

Mingus Mountain Academy is a small year round school for 85 adjudicated juvenile delinquent girls with extensive psychological problems. It is located adjacent to the Mingus Mountain National Forest and is in an isolated mountain setting in central Arizona. It has been several years since Mingus Mountain Academy received E-rate funds and the administration as well as the person responsible for completing the forms are no longer employed at the school. The part-time person filing the E-rate application was new to the process and did not fully understand the complexity of the filing process nor the impact of the late filing deadlines. Mingus Mountain Academy became aware of the E-rate program on January 16, 2008 and called USAC on that date, Case Number 21-68-0550. The USAC representative encouraged them to complete the 470 Form, wait the required 28 days and then file the 471 Form even though it would be late as well.

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The school was told to take their time completing the forms to make sure everything submitted would be correct. Furthermore, it was explained that they would initially be rejected for being late but should appeal and it will be approved since we were unaware of the deadline.

To further complicate the situation, Mingus Mountain Academy has never received the 470 Form RNL or 471 Form RAL, the requested PIN, and the letter indicating "Postmarked Outside the Window" situation.

After submitting the 471 Form, the original part-time person was reassigned and I became the official contact shortly thereafter. Please refer to May 28, 2008, Update Contact Information letter attached. I assisted the original authorized person in preparing the 470 and 471 Forms and am therefore very knowledgeable if additional information is needed. On June 16, 2008, I called USAC (Case 21-755074) and was e-mailed a duplicate copy. It was then that I was informed that a May 7, 2008, letter had been sent.

The Commission has noted in numerous decisions that the E-Rate program is relatively complex and responsible personnel are often assigned E-Rate duties on a part-time basis. In some cases, as the situation here before the Commission with this appeal, a new personnel assignment precipitated the missed deadline.

In the Bishop Perry Order, FCC 06-54, released May 19, 2006, the Commission stated:

14. Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 471 found in section 54.507 of the Commission's rules.⁴⁰ Under Bureau precedent deadlines have been strictly enforced for the E-rate program, including those pertaining to the FCC Form 471. We nevertheless find that good cause exists to waive the deadline in these cases. Generally, these applicants claim that staff mistakes or confusion resulted in the late filing of their FCC Form 471s. We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁴² We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

The Bishop Perry Order also instructed the Administrator to conduct targeted outreach to inform applicants of program rules and regulations. The Commission also instructed the Administrator to inform applicants that had filed timely Forms 470 but had failed to file Form 470 certifications

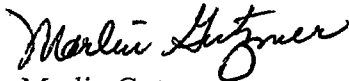
or subsequent Forms 471 of filing deadlines. Unfortunately, Mingus Mountain Academy did not file a Form 470 in a timely manner and was therefore never the recipient of Commission mandated notification. Further, *Mingus Mountain Academy was not the recipient of targeted* outreach during the Year 2008 fund cycle.

Conclusion

Mingus Mountain Academy seeks waiver of Form 471 filing deadline for this application. This funding, while relatively small compared to large school systems, is vital to the effective operation of the Mingus Mountain Academy telecommunications network. This application constitutes eligible services procured in accordance with program, state, and local regulations and in no way wastes program resources.

I have six years experience in submitting E-Rate forms for another school so all future deadlines will be met. Therefore, Mingus Mountain Academy has initiated steps to ensure ongoing compliance with program deadlines and program rules and realizes the importance of strict adherence to such rules.

Respectfully submitted this 19 day of June, 2008,



Marlin Gutzmer
E-Rate Coordinator
Mingus Mountain Academy
HC 76 HWY 89A N @ JCT 151
Prescott Valley, Arizona 86314
Phone #: 602-335-2000

Updated Contact Information as of May 28, 2008

Marlin Gutzmer
% Clarinda Academy
1820 North 16th Street
Clarinda, Iowa 51632
mgutzmer@clarindaacademy.org
Phone: 712-542-7058
Fax: 712-542-2907



MINGUS MOUNTAIN ACADEMY

Education and Treatment Center

May 28, 2008

UPDATE CONTACT INFORMATION

Billed Entity Number: 156965

471 Form Application Numbers: 638848; 638852; 638853; and 638854.

OLD INFORMATION

Entity's Street Address, P.O. Box, or Route Number, City, State, Zip Code: PO Box 26485 Prescott Valley, Arizona 86312

Entity's Phone Number: 602-476-1910

Entity's Fax Number: 602-249-1311

Contact Person's Name: Paul Bolen

Contact Person's Street Address, P.O. Box, or Route Number, City, State, Zip Code: PO Box 26485 Prescott Valley, Arizona 86312

Contact Person's Telephone Number: 602-476-1910

Contact Person's Fax Number: 602-249-1311

Contact Person's E-mail Address: pbolen@mmaaz.com

Preferred mode of contact: E-mail

NEW INFORMATION

New Entity's Street Address, P. O. Box, or Route Number, City, State, Zip Code: HC 76 HWY 89A N @ JCT 151 Prescott Valley, Arizona 86314

Entity's Phone Number: 602-476-1910

Entity's Fax Number: 602-249-1311

New Contact Person's Name: Marlin Gutzmer

New Contact Person's Street Address, P.O. Box, or Route Number, City, State, Zip Code:
% Clarinda Academy 1820 North 16th Street Clarinda, Iowa 51632

New Contact Person's Telephone Number: 712-542-7058

New Contact Person's Fax Number: 712-542-2907

New Contact Person's E-mail Address: mgutzmer@clarindaacademy.org

New Contact Person's Preferred Mode of Contact: E-mail

Mingus Mountain Academy respectfully requests the above changes in address and contact person. My position has changed and I no longer have time to complete the extensive requirements of the E-rate process.

I hereby approve of the changes.

Sincerely,



Paul A. Bolen
IT Coordinator
Mingus Mountain Academy
Phone: 602-476-1910
Fax: 602-249-1311
E-mail: pbolen@mmaaz.com